

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4007 of 1999

With

CIVIL APPLICATION NO. 13273 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KARAMTA KALABHAI LAKHMANBHAI

Versus

MAMALTDAR

Appearance:

MR TUSHAR MEHTA for Petitioner

Mrs. Manisha Lavkumar, Ld.GOV'T PLEADER for Resp No. 1

DS AFF.NOT FILED (R) for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 30/11/1999

ORAL JUDGEMENT

By means of filing this petition under Article 226 of the Constitution, petitioner who belongs to Rabari community which is declared to be Scheduled Tribe community as per the Vigat Darshak Card issued by the Adivasi Vikas Commissioner by Presidential Notification

dated 29-10-1956, has prayed for issuance of writ in the nature of mandamus for appropriate writ, direction or order, directing respondents to treat the petitioner as belonging to Scheduled Tribe Community on the basis of the Vigat Darshak Card issued in the name of petitioner's father and restraining the respondents from insisting for any other certificate.

2. It is the say of the petitioner that the petitioner belongs to Rabari community, who resided in Gir, Barda, and Alech forest area. The persons belong to Rabari community of the said area are declared to be Scheduled Tribe by the Presidential Notification dated 29-10-1956. Said community was facing several difficulties in getting the caste certificate as persons belonging to the Scheduled Tribes. Pursuant to various representations State Government appointed a Commission known as Malkan Commission, which carried out extensive survey of each and every person who was residing in the said area and on the basis of said survey the report was prepared by the said commission identifying the persons who are residing in the aforesaid area belonging to Rabari community. On the basis of the said Report the Commissioner of Adivasi Vikas has issued "Vigat Darshak Card" in favour of persons identified by Malkan Commission. The petitioner's father was given such Vigat Darshak Card, copy of which is at Annexure-A to the petition.

3. It is the say of the petitioner that the petitioner has applied for certificate on the basis of Vigat Darshak Card. However without examining the claim of the petitioner, respondent no.1 has passed cyclostyled order rejecting petitioner's application. It is further the case of the petitioner that upon the advertisement issued by respondent no.2 petitioner had applied annexing the Vigat Darshak Card for employment. Interview call was received by the petitioner by 25-2-99, asking him to attend in the interview. It was mentioned therein that the petitioner will be interviewed only if petitioner produces the certificate from Mamlatdar or Social Welfare Officer. According to petitioner said insistence of respondent no.2 is arbitrary and irrational and there is no justification for insisting for any other certificate other than the Vigat Darshak Card.

4. It may be appreciated that while issuing rule in the petition this Court has directed respondent no.2 Upaleta Municipality, to consider petitioner's candidature for the post of teacher which was scheduled to be held on 22-6-99, however the result shall be kept

in the sealed cover. Thus upon the interview of the petitioner, by virtue of the said order, the result is kept in the sealed cover.

5. Respondent No.1, State of Gujarat has filed affidavit in reply, wherein it has been affirmed that State of Gujarat rely upon the affidavit in reply filed in Spl.C.A. No. 4593/99.

6. It may be appreciated that in Spl.C.A. No. 4593/99, 5977/99 and 3885/99 similar question was posed for consideration. This Court (Coram: M.S. Shah, J) in para-10 of the said order dated 20-9-1999 has observed as under:

"10. The contention of Mr Mehta is that the Presidential Notification does not limit the operation of this declaration to only the children of the Rabaris who were residing in those forest and that when the Government has given the benefits to children of the Rabaris who were residing in the nesses as on 29.10.1956, there is no reason to deny the benefit to the grand children of the Rabaris who were residing in the nesses on 29.10.1956. While this contention of Mr. Mehta has some substance. At the same time it cannot be said that the Government can never draw a line as to when the persons may be deemed to have shifted their residence permanently. Whether the persons who were originally residing as Rabaris in the aforesaid nesses on 29-10-1956 had permanently migrated or not can perhaps be decided with reference to the number of generation which are away from the nesses. It would be reasonable to presume that even if the Rabaris might have migrated for earning living and, therefore, might not be residing in the nesses after 29.10.1956. They might come back to the locality after their retirement and so also their children and the grand children may also come back. There is no reason for limiting the benefits of this declaration only to the second generation i.e. the children. Of course, it can not also be unlimited, but at the same time it appears that the benefit can be extended to two generations i.e.. Rabaris who were residing in the nesses on 29-10-1956 and to their children who might be away for the purpose of earning living and their grand children who may be away for the purpose of education. "

7. Relying upon the aforesaid observations made in the order passed in the aforesaid petitions, it was contended by Mr. Mehta that identical question has arisen for consideration of this Court in this case also. Petitioner of the present petition also belongs to same community and he is entitled to the benefit as per the Vigat Darshak Card issued on the basis of Malkan Commission Report. Ld. AGP Ms. Manisha Lavkumar fairly conceded that the question posed for determination of this Court is squarely covered by the decision rendered on 20-9-1999 in Spl.C.A. No. 4593 of 1999 and other cognate matters. Therefore in this petition also appropriate order may be passed.

8. Having heard Ld. advocate for the parties and on having perusal of the averments made in the petition and relying upon the judgment in SCA No. 4593 of 1999, I am of the opinion that so far as the present petitioner is concerned, who is a candidate for the post of teacher pursuant to the advertisement made by respondent no.2 and who also belongs to the Scheduled Tribe Rabari Community in view of the Vigat Darshak Card issued by the Mamlatdar in his father's name, he is entitled to get the benefit.

9. In view of this, this petition is allowed and the respondent No.1 is directed to issue certificate certifying the petitioner to be a candidate belonging to Scheduled Tribe Community on the basis of the Vigat Darshak Card issued in the name of petitioner's father. Similarly respondent no.2 is also directed to declare the result of the interview which was taken on 22-6-99 pursuant to the interim order passed by this Court. pursuant to the interim order passed by this Court.

10. In the net result the petition is allowed. Rule is made absolute to the aforesaid extent. No order as to cost.

11. Civil Application No. 13273 of 1999 shall also stand disposed of with no order as to costs.

/vgn.

